

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

September 22, 2022

8:30 a.m./1:30 p.m.

**1. AMANDA ALESSANDRO V. JEREMY ALESSANDRO**

**PFL20200677**

Respondent filed an ex parte request for emergency custody orders on June 30, 2022. Respondent requested the court grant him temporary sole physical and legal custody of the minors as well as exclusive use and control of the family vehicle to transport the minors. Petitioner filed a response objecting to the request. The court denied the request in part and granted the request in part, ordering the parties to continue to have joint legal and physical custody of the minors, but that Respondent would have physical custody during Petitioner's trip to Europe. The court ordered Respondent would have use and control of the vehicle while Petitioner was in Europe.

Respondent filed a Request for Order (RFO) on July 1, 2022. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on August 1, 2022 and a review hearing on September 22, 2022.

On August 1, 2022, parties submitted a stipulation and order to the court, agreeing to a temporary parenting plan as well as shared use of the family vehicle. The court signed and adopted the stipulation of the parties as its order.

Parties attended CCRC on August 1, 2022, however, were unable to reach any agreements. A CCRC report was filed on September 9, 2022. A copy of the report was mailed to the parties on September 9, 2022. The recommendation is for the current agreement of the parties to remain in full force and effect. The parties shall continue to share joint legal and physical custody of the minors with a 2-2-3 parenting plan.

On September 1, 2022, parties submitted another stipulation and order, reflecting the recommendations as contained in the CCRC report. Parties also agreed to participate in co-parenting counseling. The court signed and adopted the stipulation of the parties on September 1, 2022.

On September 15, 2022, Respondent filed an ex parte request for emergency orders requesting the court grant him sole legal and physical custody of the eldest minor, T.A.. Respondent asserts Petitioner has been refusing to allow Respondent his parenting time with T.A. Petitioner filed a Responsive Declaration stating T.A. refuses to participate in his parenting time with Respondent despite Petitioner encouraging him to do so. The court denied the ex parte request on September 16, 2022, however, granted an order shortening time to join the request with the matter already set to be heard on September 22, 2022. Respondent filed the RFO on September 16, 2022, which was set for September 22, 2022. The court directed Respondent to serve Petitioner with the RFO on or before September 16, 2022 and Petitioner to file a Responsive Declaration on or before September 20, 2022.

There is no Proof of Service of the September 16, 2022 filed RFO in the court file. Petitioner filed a Responsive Declaration to the ex parte request on September 16, 2022, however, has not filed a further response to the RFO.

The court has read and considered the filings as outlined above. The court finds the recommendations contained in the CCRC report as agreed to by the parties in the August 1, 2022 and

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September 1, 2022 stipulations to be in the best interest of the minors. The court maintains the current orders as set forth in both stipulations.

Regarding Respondent's September 16, 2022 RFO, the court finds the RFO has not been properly served, and therefore, drops the matter from calendar.

All prior orders not in conflict with this order remain in full force and effect. Respondent shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #1: ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. THE SEPTEMBER 16, 2022 FILED RFO IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**2. APRIL LOCKHART V. DAVID MERCADO**

**PFL20200534**

Parties appeared for a hearing on Respondent's Order to Show Cause and Affidavit for Contempt and RFO for Family Code section 271 sanctions on July 21, 2022. The court continued the request for sanctions to August 18, 2022. The court also continued the arraignment on the contempt allegations to August 18, 2022.

By way of its August 18<sup>th</sup> tentative ruling, which became the order of the court, the court continued the hearing for the arraignment on the OSC re: Contempt, as the Public Defender's Office was appointed, but had not received notification of the appointment. The court continued to reserve on Respondent's request for Family Code section 271 sanctions as requested in the May 23, 2022 RFO.

The parties are ordered to appear.

**TENTATIVE RULING #2: THE PARTIES ARE ORDERED TO APPEAR.**

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**3. BRIAN BURKS V. MELISSA BURKS**

**PFL20180047**

On June 28, 2022, Respondent filed and served a Request for Order (RFO), and her Income and Expense Declaration. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on July 28<sup>th</sup>, and a hearing on the RFO was set for September 22<sup>nd</sup>.

In her RFO, Respondent requests the following orders: (1) Exchanges to take place at the minor's school or at the home of the paternal grandparents; (2) Parties to use Talking Parents only, for all forms of communication; (3) Neither party is to use the minor nor any other third party for communication regarding the parenting schedule, well-being, or decision making for the minor; (4) Both parties ordered not to make derogatory comments about the other when the child is present; (5) Petitioner to be ordered to take anger management and parenting classes; (6) Petitioner's parenting time to be temporarily suspended until he can show the court he can parent properly; (7) Legal custody temporarily to Respondent; (8) Petitioner to have supervised visitation only for the time being; (9) Respondent to keep the right of first refusal in the new orders; (10) Petitioner to stay-away from Respondent's home; (11) Petitioner to pay half of all the medical expenses accrued by the minor medical care in total of \$2,112.18; (12) Petitioner to pay Respondent's attorney's fees per Family Code 2030, in total of \$3,500; (13) Petitioner to stay away from all Marshall Medical facilities; (14) Petitioner to take Respondent off the loan of Petitioner's home; and (14) Guideline child support pursuant to the updated custody and visitation schedule.

On July 29<sup>th</sup>, the El Dorado County Department of Child Support Services (DCSS) filed a Notice of Motion for Modification of Child Support. Thus, jurisdiction over child support rests with DCSS.

Petitioner has not filed a responsive declaration opposing the orders requested by Respondent. However, Petitioner did file an Income and Expense Declaration on July 29, 2022. There is no Proof of Service. As such, this document has not been read or considered.

Respondent filed another Income and Expense Declaration July 29, 2022. There is no Proof of Service, so this document has not been read or considered.

The parties attended CCRC as scheduled. At that time Petitioner indicated that he would like the current parenting schedule to remain the same. To date, the parties have been utilizing a week on/week off schedule. The parties were unable to come to any agreements at CCRC, however the CCRC report contains several recommendations from the CCRC counselor. The report was mailed to the parties on September 13, 2022. The court notes this is less than the requisite 10 days prior to the hearing date. As such, the matter is continued to 11/10/2022 at 8:30 AM in Department 5 to provide sufficient time for the parties to review and respond to the report. The court reserves jurisdiction on all requests made in the RFO.

**TENTATIVE RULING #3: THE MATTER IS CONTINUED TO 11/10/2022 AT 8:30 AM IN DEPARTMENT 5 TO PROVIDE SUFFICIENT TIME FOR THE PARTIES TO REVIEW AND RESPOND TO THE REPORT. THE COURT RESERVES JURISDICTION ON ALL REQUESTS MADE IN THE RFO.**

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**5. ELIZABETH WINN V. SHAWN WINN**

**PFL20200187**

On August 5, 2022, Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC). There is no Proof of Service on file indicating that Respondent was personally served with the OSC. Accordingly, the matter is dropped from calendar for lack of proper service.

**TENTATIVE RULING #5: MATTER IS DROPPED FROM CALENDAR FOR LACK OF PROPER SERVICE.**

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**6. ERIKA LARSSON V. MATTIAS LARSSON**

**PFL20150771**

Respondent filed a Request for Order (RFO) on July 14, 2022. The Proof of Service filed on July 29, 2022 indicates that the RFO was served on Petitioner only. There is no Proof of Service indicating that Minor's Counsel, Kelly Bentley was served.

The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on August 1<sup>st</sup>, and a hearing on the RFO was set for September 22<sup>nd</sup>. It appears a CCRC report has not yet been prepared.

The matter is continued to 10/27/2022 at 8:30 AM in Department 5 allow for the preparation and review of the CCRC report. Respondent is ordered to serve Minor's Counsel with the RFO and a copy of this ruling.

**TENTATIVE RULING #6: THE MATTER IS CONTINUED TO 10/27/2022 AT 8:30 AM IN DEPARTMENT 5 ALLOW FOR THE PREPARATION AND REVIEW OF THE CCRC REPORT. RESPONDENT IS ORDERED TO SERVE MINOR'S COUNSEL WITH THE RFO AND A COPY OF THIS RULING. THE COURT RESERVES ON THE ISSUE OF AWARDING COSTS AND FEES BACK TO THE DATE OF FILING.**

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**7. GABRIEL C. GIAMANCO V. MONIFA A. GIAMANCO**

**PFL20210240**

On April 18, 2022, Respondent filed a Declaration Regarding Notice and Service of Request for Temporary Emergency Ex Parte Orders, Respondent's Memorandum of Points & Authorities in Support of Ex Parte and Respondent's Declaration in Support of Ex Parte Application Re Custody and Visitation. By way of her ex parte filings, Respondent sought the following orders: (1) grant Respondent primary physical custody of the children with liberal visitation to Petitioner during school holidays and during the children's vacation; (2) at the review hearing, allow for the children's input on custody and visitation to be considered and weighed; and (3) order the parents to communicate via Talking Parents.

On April 19<sup>th</sup>, Petitioner filed a Declaration of Gabriel C. Giamanco in Opposition of Petitioner's [sic] Ex Parte Request for Order.

The court ordered the parties to participate in Child Custody Recommending Counseling (CCRC) scheduled for June 2, 2022 and to utilize talkingparents.com for all communications except for emergencies. All other requests were set to be heard on July 28<sup>th</sup> as part of the regular law and motion calendar. Respondent then filed her Request for Order (RFO) making the same requests set forth in her ex parte papers.

On June 1, 2022, Petitioner filed and served a Supplemental Declaration of Gabriel C. Giamanco Regarding Custody Issues. Therein he asserted that not only has Respondent withheld the children from him during his visitation time, he also claims that she took them outside of the state of California without his permission. Given Respondent's alleged violations, Petitioner requested the court order Respondent to return to El Dorado County and have the children reside with Petitioner fulltime.

Only Petitioner attended CCRC on June 2, 2022. A report was issued and mailed to the parties thereafter on June 9<sup>th</sup>. The CCRC counselor was unable to make any recommendations as only one party participated.

After CCRC, Respondent filed another Ex Parte Application and Declaration for Orders and Notice on June 20, 2022, requesting re-referral to CCRC and asking that the July 28<sup>th</sup> hearing date be continued to allow for the parties to participate in CCRC. Petitioner did not oppose the motion however he did request that all financial matters be continued to the same date, as they had already been continued once prior, he requested sanctions in the amount of \$3,000 pursuant to Family Code 271 for the previously denied ex parte, and the second ex parte which was otherwise avoidable. The motion was granted and the parties were re-referred to CCRC with an appointment on July 18, 2022, the hearing on the motion was continued to September 22, 2022.

Petitioner filed another Supplemental Declaration of Gabriel C. Giamanco Regarding Custody Issues on July 15<sup>th</sup>. The supplemental declaration was served via electronic service the day prior, on July 14<sup>th</sup>. In this declaration, Petitioner requested full custody of the minor J.G. so he could re-enroll her in in-person school.

On July 18<sup>th</sup>, the parties participated in their second scheduled CCRC appointment. A report was issued on September 9, 2022 and mailed to the parties on September 13<sup>th</sup>. The parties were unable to

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reach any agreements at CCRC, however the CCRC counselor did provide several recommendations in his report.

On September 16, 2022, Respondent filed and electronically served Respondent's Reply Declaration in Opposition to Petitioner's Request for Primary Physical Custody, Attorney's Fees. Therein, Respondent made the following requests: (1) Deny Petitioner's request for primary physical custody; (2) Grant Respondent's request for primary physical custody; (3) Hold Petitioner in contempt of court orders; and (4) Deny Petitioner's request for sanctions and attorney's fees, and grant Respondent's request for reimbursed attorney's fees.

The court notes the CCRC report was mailed to the parties less than the requisite 10 days prior to the hearing date. Accordingly, the court continues the matter to 11/10/2022 at 8:30 AM in department 5 to allow time for the parties to review and respond to the CCRC. The court reserves jurisdiction to rule on all pending matters. Parties are ordered to file supplemental declarations regarding the referenced financial matters that have been continued to be heard on the same date as the RFO. Supplemental declarations are to be filed no later than 10 days prior to the hearing date.

**TENTATIVE RULING #7: THE COURT NOTES THE CCRC REPORT WAS MAILED TO THE PARTIES LESS THAN THE REQUISITE 10 DAYS PRIOR TO THE HEARING DATE. ACCORDINGLY, THE COURT CONTINUES THE MATTER TO 11/10/2022 AT 8:30 AM IN DEPARTMENT 5 TO ALLOW TIME FOR THE PARTIES TO REVIEW AND RESPOND TO THE CCRC. THE COURT RESERVES JURISDICTION TO RULE ON ALL PENDING MATTERS. PARTIES ARE ORDERED TO FILE SUPPLEMENTAL DECLARATIONS REGARDING THE REFERENCED FINANCIAL MATTERS THAT HAVE BEEN CONTINUED TO BE HEARD ON THE SAME DATE AS THE RFO. SUPPLEMENTAL DECLARATIONS ARE TO BE FILED NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE.**



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**8. GRAYSON HOWARD V. NATALIE PETERSEN**

**PFL20210468**

Petitioner filed a Request for Order (RFO) on June 28, 2022. Concurrently therewith he filed his Income and Expense Declaration. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on August 3<sup>rd</sup>, and a hearing on the RFO was set for September 22<sup>nd</sup>. All documents were served via U.S. mail on July 4, 2022.

Petitioner requests the following orders: (1) Joint legal custody of the minor children; (2) Overnight visits from Friday at 5:00 pm to Sunday at 5:00 pm on alternating weekends, and a weekday visit on the alternating weeks on Wednesdays from after school to 7:30; (3) Attorney's fees and sanctions pursuant to Family Code section 271 in the amount of \$1,500; (4) Reimbursement for each time Respondent requested to have Petitioner drug tested and the test results were negative, this is per the court's order of April 7, 2022. Regarding the requested visitation order, Petitioner notes that this is similar to a request he had made at the April 7<sup>th</sup> hearing asking to move forward with the step up plan the parties had agreed to without the input of Ms. Sloper-Bettencourt who attested that such a determination was outside the scope of her practice. While Petitioner, his attorney and Minor's Counsel all recall that this was granted, Respondent does not believe that was the case and has refused to move forward with the step up plan, such is the basis for his request for Section 271 sanctions.

On June 30, 2022, Respondent filed and served an RFO wherein she also requests orders regarding visitation. The Proof of Service filed indicates that only Petitioner was served with the RFO, Minor's Counsel was not. As such, the court drops this RFO from calendar for lack of proper service.

The parties attended CCRC as scheduled. They were able to reach several agreements which were codified in the CCRC report dated August 10, 2022. The CCRC counselor also provided recommendations to resolve the issues that the parties could not agree to. The CCRC report was mailed to the parties on August 31, 2022.

Minor's Counsel has filed a declaration, however there is no Proof of Service on file indicating that either of the other parties were served. Accordingly, the court has not considered it.

On September 8, 2022, Respondent filed a Responsive Declaration to Request for Order. It was served personally on Minor's Counsel and on Petitioner a day later. Respondent requests the following: (1) Petitioner to have visitation on the 1<sup>st</sup> and 3<sup>rd</sup> Saturdays for an 8 hour visit; (2) Visitation on the 2<sup>nd</sup> and 4<sup>th</sup> weeks on Wednesday from 5 pm to 7 pm; (3) No increase in visitation without the children enrolled in individual counseling and the therapist deems it appropriate; (4) Petitioner is not to have any third party(ies) present for the duration of his visitation with the children; (5) Respondent to have sole legal custody.

Petitioner filed his Responsive Declaration to Request for Order and his Supplemental Declaration in Response to Respondent's Declaration and CCRC on September 14<sup>th</sup>, both of which were served the day prior. While Petitioner agrees with the recommendations of the CCRC report, he feels that the report does not accurately reflect what the parties agreed to with regard to parenting time. As stated, he feels that Respondent will continue to use the CCRC report as a means of blocking his parenting time without the prior approval of a reunification therapist.

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On September 19<sup>th</sup>, Minor's Counsel filed and electronically served Minor's Counsel Recommendation, wherein she states that she is in agreement with joint legal custody and the parenting plan as outlined in the CCRC report.

The court has reviewed the aforementioned filings of the parties and the CCRC report. The court finds that the agreements and recommendations contained in the August 10, 2022 CCRC report are in the best interest of the children with the following modifications: (1) Provision one of the counseling section shall be amended to read as follows – "The parties are to enroll each child into individual counseling as soon as possible. The parties are to engage in good faith discussions to choose a therapist for the children. If the parties cannot agree, then Respondent shall have the final say on the decision. The parties are ordered to execute all necessary releases which are required to allow Minor's Counsel access to the therapeutic records of the minors and to allow Minor's Counsel to discuss treatment and recommendations directly with the therapist." (2) Parenting Time shall be as follows:

Step 1 - Step one is to begin immediately. Under step one, Petitioner's parenting time shall be on the 1<sup>st</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> Saturdays from 8 a.m. to 7 p.m. and Sunday from 8 a.m. to 11 a.m.; Petitioner shall have the 2<sup>nd</sup> and 4<sup>th</sup> Wednesday with A.H. from 5 p.m. to 7 pm. And the 1<sup>st</sup> and 3<sup>rd</sup> Wednesday with R.H. from 5 p.m. to 7 p.m.

Step 2 - Once the children have begun therapy, step two is to commence 30 days from the date of the children's first therapy session. Under step two, Petitioner shall have the 1<sup>st</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> weekend of each month from Saturday at 8 a.m. to Sunday at 7 p.m.

Regression – If at any time the children's therapist and/or Minor's Counsel feel it is in the best interest of the children to revert to step 1, the parties are ordered to do so immediately.

Petitioner does not provide the amount of reimbursement he is seeking for negative drug tests nor any supporting documentation. However, the court reiterates its ruling of April 6<sup>th</sup>. For any test requested by Respondent during the 60 days following the April 6<sup>th</sup> ruling, if the test was negative, Respondent is to reimburse Petitioner for the cost of the test. If the test was positive, no reimbursement is needed. Respondent must reimburse Petitioner within 10 days of receiving documentation from Petitioner showing the cost of the testing and the negative test results.

Petitioner's request for sanctions is denied. In determining whether or not to award sanctions pursuant to Family Code section 271 the court is to consider the extent to which the actions of each party have frustrated the policy of the law to promote settlement and reduce the cost of litigation. It appears from the filings of the parties that there was a good faith dispute as to the progression of the parenting plan. As such, sanctions are not warranted at this time.

**TENTATIVE RULING #8: THE COURT FINDS THAT THE AGREEMENTS AND RECOMMENDATIONS CONTAINED IN THE AUGUST 10, 2022, CCRC REPORT ARE IN THE BEST INTEREST OF THE CHILDREN, AS SUCH, THEY ARE ADOPTED AS THE ORDER OF THE COURT WITH THE FOLLOWING MODIFICATIONS: (1) PROVISION ONE OF THE COUNSELING SECTION SHALL BE AMENDED TO READ AS FOLLOWS – "THE PARTIES ARE TO ENROLL EACH CHILD INTO INDIVIDUAL COUNSELING AS SOON AS POSSIBLE. THE**

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PARTIES ARE TO ENGAGE IN GOOD FAITH DISCUSSIONS TO CHOOSE A THERAPIST FOR THE CHILDREN. IF THE PARTIES CANNOT AGREE THEN RESPONDENT SHALL HAVE THE FINAL SAY ON THE DECISION. THE PARTIES ARE ORDERED TO EXECUTE ALL NECESSARY RELEASES WHICH ARE REQUIRED TO ALLOW MINOR'S COUNSEL ACCESS TO THE THERAPEUTIC RECORDS OF THE MINORS AND TO ALLOW MINOR'S COUNSEL TO DISCUSS TREATMENT AND RECOMMENDATIONS DIRECTLY WITH THE THERAPIST." (2) PARENTING TIME SHALL BE AS FOLLOWS:

STEP 1 - STEP ONE IS TO BEGIN IMMEDIATELY. UNDER STEP ONE, PETITIONER'S PARENTING TIME SHALL BE ON THE 1<sup>ST</sup>, 3<sup>RD</sup>, AND 5<sup>TH</sup> SATURDAYS FROM 8 A.M. TO 7 P.M. AND SUNDAY FROM 8 A.M. TO 11 A.M.; PETITIONER SHALL HAVE THE 2<sup>ND</sup> AND 4<sup>TH</sup> WEDNESDAY WITH A.H. FROM 5 P.M. TO 7 PM. AND THE 1<sup>ST</sup> AND 3<sup>RD</sup> WEDNESDAY WITH R.H. FROM 5 P.M. TO 7 P.M.

STEP 2 - ONCE THE CHILDREN HAVE BEGUN THERAPY, STEP TWO IS TO COMMENCE 30 DAYS FROM THE DATE OF THE CHILDRENS' FIRST THERAPY SESSION. UNDER STEP TWO, PETITIONER SHALL HAVE THE 1<sup>ST</sup>, 3<sup>RD</sup>, AND 5<sup>TH</sup> WEEKEND OF EACH MONTH FROM SATURDAY AT 8 A.M. TO SUNDAY AT 7 P.M.

REGRESSION – IF AT ANY TIME THE CHILDRENS' THERAPIST AND/OR MINOR'S COUNSEL FEEL IT IS IN THE BEST INTEREST OF THE CHILDREN TO REVERT TO STEP 1, THE PARTIES ARE ORDERED TO DO SO IMMEDIATELY.

THE COURT REITERATES ITS RULING OF APRIL 6<sup>TH</sup>: FOR ANY TEST REQUESTED BY RESPONDENT DURING THE 60 DAYS FOLLOWING THE APRIL 6<sup>TH</sup> RULING, IF THE TEST WAS NEGATIVE, RESPONDENT IS TO REIMBURSE PETITIONER FOR THE COST OF THE TEST. IF THE TEST WAS POSITIVE, NO REIMBURSEMENT IS NEEDED. RESPONDENT MUST REIMBURSE PETITIONER WITHIN 10 DAYS OF RECEIVING DOCUMENTATION FROM PETITIONER SHOWING THE COST OF THE TESTING AND THE NEGATIVE TEST RESULTS. PETITIONER'S REQUEST FOR SANCTIONS IS DENIED. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER ARE TO REMAIN IN FULL FORCE AND EFFECT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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**10. MATTHEW TOOCH V. JENNIFER HOLLY**

**PFL20140486**

On June 21, 2022, Respondent filed a Request for Order (RFO) and an Income and Expense Declaration. While there is no Proof of Service on file, Petitioner has filed a responsive declaration to the RFO. Thus, the court finds that Petitioner had actual notice of the RFO and any defect in service is waived.

In her RFO, Respondent requests an order changing to current 2-2-3 parenting plan to a 2-2-5-5. She requests guideline child support based on the new timeshare and on Petitioner's recent increased income. Additionally, she asks the court to vacate or modify its previous order precluding contact between the minor children and Matthew Lea AKA Matt Freuh. Finally, she asks for the appointment of a private-pay Child Custody Recommending Counselor (CCRC). The parties were referred to CCRC with an appointment on July 29, 2022, and a hearing was set for September 22, 2022.

Petitioner filed his Responsive Declaration to Request for Order on September 2, 2022. In his declaration Petitioner agrees to the 2-2-5-5 parenting plan and requests additional guidelines as enumerated in his declaration, he also asks that the stay away order remain in effect. He agrees to guideline child support but notes that Respondent did not disclose the entirety of her income. Finally, he asks for attorney's fees and costs in the amount of \$3,500 due to Respondent's failure to meet and confer on the issue prior to filing the RFO which caused him to unnecessarily incur the requested amount.

The parties attended CCRC as scheduled. A report was prepared and mailed on September 13<sup>th</sup>. The court notes this is less than the requisite 10-day period for the parties to review and respond to the report. The CCRC report enumerates the agreements reached by the parties, as well as recommendations on the issues that were not agreed upon. In summary, the report indicates that the parties agreed to a 2-2-5-5 parenting plan but could not agree on vacating the stay away order. The CCRC counselor did recommend the order be vacated as the counselor felt there was no indication of an imminent risk of injury to the children.

On September 15, 2022, Petitioner filed Petitioner's Reply Declaration in Response to Child Custody Recommending Counseling Report. There is no Proof of Service on file indicating that this document was properly served. As such, the court has not read or considered it.

On September 16, 2022, Respondent filed two Reply Declarations and a Declaration of Matt Freuh. These filings are untimely. Reply declarations must be filed no later than 5 court days prior to the date of the hearing. As such, the court has not read or considered these documents.

Request for Judicial Notice

In support of her RFO, Respondent filed a Request for Judicial Notice of the minutes from Mr. Lea's felony cases in El Dorado County wherein Mr. Lea was granted early termination of dismissal and count one of his conviction was reduced to a misdemeanor and dismissed. The request was properly served on August 10, 2022.

ATTORNEY (NAME AND ADDRESS): <b>EDC Court</b>  <b>California</b>	TELEPHONE NO.:	Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
ATTORNEY FOR:  <div style="text-align: center;"> <b>DISSOMASTER REPORT</b>          2022, Monthly       </div>		CASE NUMBER: <div style="color: blue; font-family: cursive;">PFL20140486</div>

Input Data	Father	Mother	Guideline (2022)	Cash Flow Analysis	Father	Mother
Number of children	1	1	<b>Nets (adjusted)</b>	<b>Guideline</b>		
% time with Second Parent	50%	50%	Father	8,461	Payment (cost)/benefit	591 (591)
Filing status	HH/MLA	HH/MLA	Mother	11,537	Net spendable income	9,052 10,946
# Federal exemptions	2*	2*	Total	19,998	% combined spendable	45.3% 54.7%
Wages + salary	13,333	18,750	<b>Support</b>		Total taxes	3,997 6,039
401(k) employee contrib	0	0	CS Payor	Mother	# WHA	5 5
Self-employment income	0	0	Presumed	591	Net wage paycheck/mo	9,261 12,543
Other taxable income	600	0	Basic CS	591	Comb. net spendable	19,998
Short-term cap. gains	0	0	Add-ons	0	<b>Proposed</b>	
Long-term cap. gains	0	0	Presumed Per Kid		Payment (cost)/benefit	532 (532)
Other gains (and losses)	0	0	Child 1	233	Net spendable income	9,195 10,907
Ordinary dividends	0	0	Child 2	358	NSI change from gdl	143 (39)
Tax, interest received	0	0	Spousal support	blocked	% combined spendable	45.7% 54.3%
Social Security received	0	0	Total	591	% of saving over gdl	137.8% -37.8%
Unemployment compensation	0	0	<b>Proposed, tactic 9</b>		Total taxes	3,795 6,137
Operating losses	0	0	CS Payor	Mother	# WHA	7 4
Ca. operating loss adj.	0	0	Presumed	532	Net wage paycheck/mo	9,447 12,423
Roy, partnerships, S corp, trusts	0	0	Basic CS	532	Comb. net spendable	20,102
Rental income	0	0	Add-ons	0	Percent change	0.5%
Misc ordinary tax, inc.	600	0	Presumed Per Kid		<b>Default Case Settings</b>	
Other nontaxable income	0	0	Child 1	175		
New-spouse income	0	0	Child 2	358		
Adj. to income (ATI)	0	0	Spousal support	blocked		
SS paid other marriage	0	0	Total	532		
Ptr Support Pd. other P'ships	0	0	Savings	104		
CS paid other relationship	0	0	Total releases to Father	1		
Health ins(Pd by party)	1,187	1,174				
Qual. Bus. Inc. Ded.	0	0				
Itemized deductions	0	0				
Other medical expenses	0	0				
Property tax expenses	0	0				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
Required union dues	0	0				
Cr. for Pd. Sick and Fam. L.	0	0				
Mandatory retirement	0	0				
Hardship deduction	288*	0*				
Other gdl. deductions	0	0				
AMT info (IRS Form 6251)	0	0				
Child support add-ons	0	0				
TANF, SSI and CS received	0	0				

ATTORNEY (NAME AND ADDRESS): <b>EDC Court  California</b>	TELEPHONE NO: 	Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
ATTORNEY FOR: <b>Two-way Annual Bonus Wages Report 2022 Yearly</b>		CASE NUMBER: <b>PFL20140486</b>

## Change in Child Support

Blue is a cost to Father. *Red italic is a cost to Mother*

Mother's Gross Bonus Wages	Father's Gross Bonus Wages							
	1,000	6,000	11,000	16,000	21,000	26,000	31,000	36,000
1,000	35	682	1,325	1,962	2,596	3,168	3,717	4,225
6,000	437	209	851	1,489	2,122	2,693	3,242	3,750
11,000	904	258	383	1,021	1,653	2,225	2,773	3,281
16,000	1,354	709	68	569	1,201	1,772	2,321	2,829
21,000	1,839	1,194	553	83	715	1,286	1,834	2,342
26,000	2,321	1,677	1,037	401	231	801	1,349	1,856
31,000	2,802	2,158	1,518	883	252	318	866	1,373
36,000	3,280	2,637	1,998	1,363	732	163	385	892
41,000	3,757	3,114	2,476	1,841	1,211	641	94	412
46,000	4,231	3,589	2,952	2,318	1,688	1,119	572	66



PETITIONER:  
RESPONDENT:

CASE NUMBER:

PFL 20140486

## Total Child Support

Blue is a cost to Father. *Red italic is a cost to Mother*

Mother's Gross Bonus Wages	Father's Gross Bonus Wages							
	1,000	6,000	11,000	16,000	21,000	26,000	31,000	36,000
1,000	7,051	6,404	5,761	5,124	4,490	3,918	3,369	2,861
6,000	7,523	6,877	6,235	5,597	4,964	4,393	3,844	3,336
11,000	7,990	7,344	6,703	6,066	5,433	4,861	4,313	3,805
16,000	8,441	7,795	7,154	6,517	5,885	5,314	4,765	4,257
21,000	8,925	8,280	7,639	7,003	6,371	5,800	5,252	4,744
26,000	9,408	8,763	8,123	7,487	6,855	6,285	5,737	5,230
31,000	9,888	9,244	8,604	7,969	7,338	6,768	6,220	5,713
36,000	10,366	9,723	9,084	8,449	7,818	7,249	6,701	6,194
41,000	10,843	10,200	9,562	8,927	8,297	7,728	7,180	6,674
46,000	11,318	10,676	10,038	9,404	8,774	8,205	7,658	7,152



LAW & MOTION TENTATIVE RULINGS

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California Evidence Code sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. Judicial notice of “[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States” *may* be taken. Cal. Evid. Code § 452(d). Where a party requests judicial notice and “(a) [g]ives each adverse party sufficient notice of the request...to enable such adverse party to prepare to meet the request; and (b) [f]urnishes the court with sufficient information to enable it to take judicial notice of the matter” such notice *shall* be granted. Cal. Evid. Code §453.

Respondent has provided the court and Petitioner with sufficient notice of the request as well as sufficient information to take judicial notice. The documents provided are part of the record of the El Dorado County Superior Court. Accordingly, Respondent’s request for judicial notice is granted.

Objection to Respondent’s Reply Declaration and Declaration of Matt Freuh

Petitioner objects to Respondent’s Reply Declaration and the Declaration of Matt Freuh, both of which were filed and served on September 16, 2022. California Code of Civil Procedure section 1005(b) mandates, in pertinent part, “[a]ll papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing.” The court notes that September 16<sup>th</sup> is just four court days prior to the September 22<sup>nd</sup> hearing date. As such, the court has not read or considered the foregoing documents.

Parenting Plan

As agreed to by the parties, the parties are to commence a 2-2-5-5 parenting schedule. Petitioner to have the children Monday at 8:00am through Wednesday at 8:00am and every other weekend from Friday at 8:00am through Monday at 8:00am. This schedule is to commence on the next Monday that Petitioner is scheduled to have the children. Each party is to allow the other party to initiate at least one phone/video call with the minors during his or her 5-day parenting period. All other phone or video calls to the non-custodial parent, are to be initiated by the child if the child so chooses.

Each party gets one 10-day vacation per year and an additional 7-day vacation per year. The vacations are not to be taken consecutively without the prior written consent of the other party. Neither party is to leave the state or the country without the prior written consent of the other party.

The current Easter and Thanksgiving Day schedule is to be modified to allow the parenting time for the custodial parent on those days to have from 8:00am on the holiday through 8:00am the day after the holiday.

The parties are to abide by the following respect guidelines: (1) Both parties are to foster a feeling of affection between the children and the other party. Neither party shall do anything to estrange the children from the other party, nor impair the natural development of the children’s love and respect for the other parent. The parties are to encourage love and affection between the children and the other party and they must permit the children to express love and affection for the other parent; (2) Neither party shall make disparaging remarks about the other party or about the other party’s extended family, relatives, friends, or significant others while in the presence of or within



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earshot of the children; (3) Parties shall ensure that extended family, relatives, friends or significant others do not make disparaging remarks about the other party or the other party's extended family, relatives, friends or significant others, in the presence of or within earshot of the children; (4) The parties shall not, and shall not permit others to, talk to the children or allow conversation within earshot of the children, about issues pertaining to the divorce, separation, or custody disputes or orders with the children other than as it pertains to scheduling or the child's appearance at, or participation in, a court proceeding, unless it is discussion in a therapeutic setting with an appropriately licensed professional. However, the parties are not to ask the children to carry messages between the parties.

Regarding Petitioner's request for orders pertaining to school enrollment and attendance, the request is overbroad and vague. From the filings of the parties, it does not appear there are school attendance issues at this time, nor is there a dispute regarding where the children will attend school. The court declines to make this ruling at this time.

Child Support

The court is in receipt of Respondent's Income and Expense Declaration filed June 21, 2022, and Petitioner's Income and Expense Declaration filed September 2, 2022. Based on the information in those declarations and the filings of the parties, the court finds that spousal support per the Alameda formula is \$591 per month. See attached DissoMaster report. This accounts for a monthly income of \$13,333 to Petitioner plus an additional \$600 monthly automobile bonus. \$1,187 in health insurance and \$288 for a monthly hardship deduction. Respondent has a monthly income of \$18,750, healthcare expenses of \$1,174, and a monthly hardship of \$925.

The court adopts the attached DissoMaster report and orders Respondent to pay Petitioner \$591 per month as and for child support, payable on the 1st of the month until further order of the court or legal termination. The court orders the child support order effective July 1, 2022.

The court finds the above order results in and overage payment in the amount of \$1,032 through and including September 1, 2022. Respondent may reduce monthly child support by \$200 each month until the overage is paid in full (approximately 5 months).

Additionally, the court adopts the attached DissoMaster two-way bonus table to account for bonuses received by either party.

Stay Away Order

As a threshold issue, Petitioner objects to the court's hearing the issue of lifting the stay away order based on the doctrine of Res Judicata. However, the Marital Settlement Agreement states that the stay away order is to remain in full force and effect "absent mutual written agreement for exceptions or future court orders." Thus, by the agreement of the parties, the court maintained jurisdiction to rule on the issue.

The court does not take allegations of domestic violence lightly. However, it is apparent from the transcript of the court proceedings that Mr. Freuh has put in significant work in his rehabilitation, such that his record has been expunged. There appears to be no reason why Mr. Freuh should not be

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able to attend events held in public where his children are present. The stay away order is modified as follows: Mr. Freuh may attend events or conduct pick-ups and drop-offs held in a public setting where his children are present. However, Mr. Freuh is not to be left alone with the minors, E.T. and A.T., and he is not to attend events or pick-ups/drop-offs where the minors are present unless his children are also in attendance.

Private Pay CCRC

Respondent's request for private pay CCRC is denied as the parties reached agreements at CCRC conducted with the court.

Attorney's Fees

Petitioner's request for attorney's fees is denied. While the court notes that Petitioner did not dispute the 2-2-5-5 parenting plan in his responsive declaration, it appears he did initially object to it at CCRC. Further, the issue of the stay away order seemingly would have required court intervention regardless given the highly contested nature of the issue.

**TENTATIVE RULING #10: THE PARTIES ARE TO COMMENCE A 2-2-5-5 PARENTING SCHEDULE. PETITIONER TO HAVE THE CHILDREN MONDAY AT 8:00AM THROUGH WEDNESDAY AT 8:00AM AND EVERY OTHER WEEKEND FROM FRIDAY AT 8:00AM THROUGH MONDAY AT 8:00AM. THIS SCHEDULE IS TO COMMENCE ON THE NEXT MONDAY THAT PETITIONER IS SCHEDULED TO HAVE THE CHILDREN. EACH PARTY IS TO ALLOW THE OTHER PARTY TO INITIATE AT LEAST ONE PHONE/VIDEO CALL WITH THE MINORS DURING HIS OR HER 5-DAY PARENTING PERIOD. ALL OTHER PHONE OR VIDEO CALLS TO THE NON-CUSTODIAL PARENT, ARE TO BE INITIATED BY THE CHILD IF THE CHILD SO CHOOSES.**

**EACH PARTY GETS ONE 10-DAY VACATION PER YEAR AND AN ADDITIONAL 7-DAY VACATION PER YEAR. THE VACATIONS ARE NOT TO BE TAKEN CONSECUTIVELY WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY. NEITHER PARTY IS TO LEAVE THE STATE OR THE COUNTRY WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY.**

**THE CURRENT EASTER AND THANKSGIVING DAY SCHEDULE IS TO BE MODIFIED TO ALLOW THE PARENTING TIME FOR THE CUSTODIAL PARENT ON THOSE DAYS TO HAVE FROM 8:00AM ON THE HOLIDAY THROUGH 8:00AM THE DAY AFTER THE HOLIDAY.**

**THE PARTIES ARE TO ABIDE BY THE FOLLOWING RESPECT GUIDELINES: (1) BOTH PARTIES ARE TO FOSTER A FEELING OF AFFECTION BETWEEN THE CHILDREN AND THE OTHER PARTY. NEITHER PARTY SHALL DO ANYTHING TO ESTRANGE THE CHILDREN FROM THE OTHER PARTY, NOR IMPAIR THE NATURAL DEVELOPMENT OF THE CHILDREN'S LOVE AND RESPECT FOR THE OTHER PARENT. THE PARTIES ARE TO ENCOURAGE LOVE AND AFFECTION BETWEEN THE CHILDREN AND THE OTHER PARTY AND THEY MUST PERMIT THE CHILDREN TO EXPRESS LOVE AND AFFECTION FOR THE OTHER PARENT; (2) NEITHER PARTY SHALL MAKE DISPARAGING REMARKS ABOUT THE OTHER PARTY OR ABOUT THE**

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**OTHER PARTY'S EXTENDED FAMILY, RELATIVES, FRIENDS, OR SIGNIFICANT OTHERS WHILE IN THE PRESENCE OF OR WITHIN EARSHOT OF THE CHILDREN; (3) PARTIES SHALL ENSURE THAT EXTENDED FAMILY, RELATIVES, FRIENDS OR SIGNIFICANT OTHERS DO NOT MAKE DISPARAGING REMARKS ABOUT THE OTHER PARTY OR THE OTHER PARTY'S EXTENDED FAMILY, RELATIVES, FRIENDS OR SIGNIFICANT OTHERS, IN THE PRESENCE OF OR WITHIN EARSHOT OF THE CHILDREN; (4) THE PARTIES SHALL NOT, AND SHALL NOT PERMIT OTHERS TO, TALK TO THE CHILDREN OR ALLOW CONVERSATION WITHIN EARSHOT OF THE CHILDREN, ABOUT ISSUES PERTAINING TO THE DIVORCE, SEPARATION, OR CUSTODY DISPUTES OR ORDERS WITH THE CHILDREN OTHER THAN AS IT PERTAINS TO SCHEDULING OR THE CHILD'S APPEARANCE AT, OR PARTICIPATION IN, A COURT PROCEEDING, UNLESS IT IS DISCUSSION IN A THERAPEUTIC SETTING WITH AN APPROPRIATELY LICENSED PROFESSIONAL. HOWEVER, THE PARTIES ARE NOT TO ASK THE CHILDREN TO CARRY MESSAGES BETWEEN THE PARTIES.**

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**13. TODD FUJIWARA V. KRIS FUJIWARA**

**PFL20150424**

On June 20, 2022, Petitioner filed an Order to Show Cause and Affidavit for Contempt which was scheduled for a hearing date of August 18, 2022. On August 2<sup>nd</sup> Petitioner requested to reschedule the hearing due to difficulties serving Respondent. The request was granted and the hearing was rescheduled for September 22, 2022.

On August 29<sup>th</sup>, Petitioner filed a Proof of Service indicating personal service was effectuated on August 23, 2022. The Proof of Service does not identify the name of the individual served and the address for service is not the address the court has on file for Respondent.

The matter is dropped from calendar for lack of proper service.

**TENTATIVE RULING #13: THE MATTER IS DROPPED FROM CALENDAR FOR LACK OF PROPER SERVICE.**

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**12. STEVEN CHAFFIN V. LINDA CHHON-CHAFFIN**

**PFL20160242**

Petitioner filed a Request for Order (RFO) on August 01, 2022, making a renewed request for child support orders. Petitioner had previously filed a request for child support orders on October 1, 2021, which is currently set to be heard with the contested matter for child custody on October 18-19, 2022. Respondent was served by mail on August 8, 2022. Petitioner filed an Income and Expense declaration on July 18, 2022. Respondent was served by mail on July 15, 2022.

Petitioner requests the court order guideline child support back to the date of the original request for child support, October 1, 2021. Petitioner asserts the matter was originally set to be heard on December 16, 2021, but was continued and then joined with the trial set for February 2022. The trial has been continued multiple times since, leaving the child support issue pending. Petitioner also requests the court include the mandatory addons of one-half work related childcare costs and one half of unreimbursed medical expenses. Petitioner attached a proposed DissoMaster as Exhibit 5 to the RFO.

On August 17, 2022, the court signed the parties' stipulation to continue the matter from September 15, 2022 to September 22, 2022.

Respondent filed a Responsive Declaration and Income and Expense Declaration on August 24, 2022. Petitioner was served by mail on August 24, 2022. Respondent consents to guideline child support, however, requests Petitioner provide the court with his income tax return information for 2021, or in the alternative the court utilize his 2020 income of \$94,997 to calculate guideline support.

The court has read and considered the filings as outlined above and make the following findings and orders:

The court adopts Petitioner's proposed DissoMaster as set forth in Exhibit 5. The court orders temporary guideline child support payable from Respondent to Petitioner in the amount of \$780 per month effective October 1, 2021 and payable the first of each month until further court order or termination by operation of law. The court further orders the parties to share equally the costs of work-related childcare and unreimbursed medical expenses pursuant to Family Code Section 4062(b). The court reserves jurisdiction to retroactively modify child support to October 1, 2021.

The court finds this order results in an arrears balance of \$8,580 for the months of October 2021 through September 2022 inclusive. The court orders Respondent to pay Petitioner \$429 per month as and for arrears beginning October 15, 2022 and due on the 15<sup>th</sup> of each month until paid in full (approximately 20 months). If there is any missed payment, the entire balance is due in full with legal interest.

The court notes Petitioner earns overtime and has the potential to earn significant overtime, given the nature of his employment. The court orders Petitioner to prepare and file an overtime table. The parties are ordered to reconcile overtime monthly.

All prior orders not in conflict with this order remain in full force and effect. Petitioner shall prepare and file the Findings and Orders After Hearing.

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**TENTATIVE RULING #12: THE COURT ADOPTS PETITIONER'S PROPOSED DISSOMASTER REPORT. THE COURT ORDERS TEMPORARY GUIDELINE CHILD SUPPORT PAYABLE FROM RESPONDENT TO PETITIONER IN THE AMOUNT OF \$780 PER MONTH EFFECTIVE OCTOBER 1, 2021 AND PAYABLE THE FIRST OF EACH MONTH UNTIL FURTHER COURT ORDER OR TERMINATION BY OPERATION OF LAW. THE COURT FURTHER ORDERS THE PARTIES TO SHARE EQUALLY THE COSTS OF WORK-RELATED CHILDCARE AND UNREIMBURSED MEDICAL EXPENSES PURSUANT TO FAMILY CODE SECTION 4062(B). THE COURT RESERVES JURISDICTION TO RETROACTIVELY MODIFY CHILD SUPPORT TO OCTOBER 1, 2021. THE COURT ORDERS RESPONDENT TO PAY PETITIONER \$429 PER MONTH AS AND FOR ARREARS BEGINNING OCTOBER 15, 2022 AND DUE ON THE 15TH OF EACH MONTH UNTIL PAID IN FULL (APPROXIMATELY 20 MONTHS). IF THERE IS ANY MISSED PAYMENT, THE ENTIRE BALANCE IS DUE IN FULL WITH LEGAL INTEREST. THE COURT ORDERS PETITIONER TO PREPARE AND FILE AN OVERTIME TABLE. THE PARTIES ARE ORDERED TO RECONCILE OVERTIME MONTHLY. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**